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10                   UNITED STATES DISTRICT COURT  
11                   EASTERN DISTRICT OF WASHINGTON

12                   UNITED STATES OF AMERICA,  
13                   Plaintiff,  
14                   v.  
15                   CHRISTOPHER WILLIAMS,  
16                   Defendant.

17                   No. CR-08-0106-RHW

18                   **ORDER GRANTING MOTION  
19                   FOR REDUCTION IN SENTENCE  
20                   UNDER SECTION 3582(c)(2)**

21                   Defendant moves the Court to reduce his sentence based on an amendment to  
22 the Sentencing Guidelines. This matter was heard without oral argument and without  
23 objection from the Government. For the reasons below, the Court will grant the  
24 motion.

25                   **Original Sentence**

26                   On October 10, 2008, Defendant pleaded guilty to possession of five or more  
27 grams of cocaine base, in violation of 21 U.S.C. § 841(a)(1). Because the offense  
28 involved 8.2 net grams of cocaine base, as stipulated in the plea agreement, it resulted  
in a base offense level of 24. After a three-point reduction for acceptance of  
responsibility and combined with Defendant's criminal history score of VI, the  
applicable Guideline range was between 70 and 87 months. The Court imposed a

**ORDER REDUCING DEFENDANT'S SENTENCE \* 1**

1 high-end sentence of 85 months and ten years supervised release. (ECF No. 52).

2 **Fair Sentencing Act**

3 In 2010, Congress passed the Fair Sentencing Act, a portion of which reduced  
 4 the disparity between criminal penalties for crack cocaine and powder cocaine  
 5 offenses. The Act increased the amount of crack cocaine necessary to trigger the  
 6 mandatory minimum sentences and, relevant here, decreased the offense levels for  
 7 various quantities of crack cocaine. U.S.S.G. § 2D1.1(c) (2011). These Guideline  
 8 amendments became retroactive November 1, 2011, when Congress failed to act with  
 9 disapproval. U.S.S.G. § 1B1.10 (discussing retroactive application of Amendment  
 10 750); *see also* 28 U.S.C. § 994(p). As a result, the Court has discretion to calculate a  
 11 new Guideline range for Defendant, taking account of these amendments, and re-  
 12 sentence him within the modified range. 18 U.S.C. § 3582(c)(2).

13 **Modified Sentence**

14 The base offense level under the modified Guidelines is 18, U.S.S.G.  
 15 §2D1.1(c)(11) (at least 5.6 grams but less than 11.2 grams of cocaine base), which is  
 16 reduced by three points because Defendant accepted responsibility. Fused with  
 17 Defendant's level VI criminal history, this modified offense level would result in a  
 18 range of 41 to 51 months, but for the five-year mandatory minimum still in effect. The  
 19 Court therefore is without power to reduce the sentence below sixty months. United  
 20 States v. Sykes, 658 F.3d 1140, 1146-47 (9th Cir. 2011). However, considering the  
 21 factors set forth in Section 3553(a), and, for the reasons articulated at the original  
 22 sentencing hearing, it determines that a reduction is appropriate and will reduce the  
 23 Defendant's sentence to sixty months.

24 Accordingly, **IT IS HEREBY ORDERED:**

25 1. The Defendant's Motion for Retroactive Application of Sentencing  
 26 Guidelines (ECF No. 69) is **GRANTED**.

27 2. The Defendant's original sentence of 85 months imprisonment is  
 28 **VACATED**. He is committed to the custody of the Bureau of Prisons for a term of

**ORDER REDUCING DEFENDANT'S SENTENCE \* 2**

1 **60 months.** All other portions of the sentence, including the ten-year term of  
2 supervised release, remain unchanged.

3 3. The Defendant's Motion for Appointment of Counsel (ECF No. 70) is  
4 **DENIED, as moot.**

5 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
6 order and to provide copies to counsel, the U.S. Probation Department, and the U.S.  
7 Bureau of Prisons.

8 **DATED** this 18<sup>th</sup> day of January, 2012.

9  
10 *s/Robert H. Whaley*  
11 ROBERT H. WHALEY  
12 United States District Judge  
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